

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ANGELO DENNINGS, et al.,

11 Plaintiffs,

12 v.

13 CLEARWIRE CORPORATION,

14 Defendant.

CASE NO. C10-1859JLR

NOTICE TO OBJECTORS AND
COUNSEL REGARDING
SANCTIONS

15 The court recently ordered counsel for Objectors Gordan Morgan and Jeremy De
16 La Garza to appear and show cause why they should not be sanctioned for disobeying a
17 court order. Due process requires the court to notify the party being sanctioned of the
18 legal rule on which sanctions are to be based, the reasons for the sanctions, and the form
19 of the potential sanctions. *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1109-10 (9th Cir.
20 2005); *Mickle v. Morin*, 297 F.3d 114, 126 (2d Cir. 2002); *Rogal v. Am. Broadcasting*
21 *Co., Inc.*, 74 F.3d 40, 44 (3d Cir. 1996). The court must notify the party being sanctioned
22 that it stands accused of bad faith conduct, not merely unreasonable conduct. *In re*

1 *DeVille*, 361 F.3d 539, 549 (9th Cir. 2004). The court has already notified Objectors and
 2 their counsel of the reasons for the possible sanctions. (7/19/13 Order (Dkt. # 154);
 3 7/26/13 Order (Dkt. # 156).) This order is to provide notice of the legal rule on which
 4 sanctions would be based, the form of the potential sanctions, and to notify Objectors and
 5 their counsel that they stand accused of bad faith conduct—namely, willful disobedience
 6 of a court order.

7 **A. Legal rule on which sanctions are to be based**

8 Sanctions, if imposed, would be based on the court’s inherent authority or Western
 9 District of Washington Local Rule 11(c).¹ Federal courts have inherent power to impose
 10 sanctions against attorneys and parties who willfully abuse the judicial process. *Or. RSA*
 11 *No. 6, Inc. v. Castle Rock Cellular of Or. Ltd*, 76 F.3d 1003, 1007 (9th Cir. 1996);
 12 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). These powers are necessarily
 13 inherent in the courts from the nature of their institution and are necessary to the exercise
 14 of judicial power. *Id.* (citing *United States v. Hudson*, 7 Cranch 32, 34 (1812)). “Courts
 15 of justice are universally acknowledged to be vested, by their very creation, with power
 16 to impose silence, respect, and decorum, in their presence, and submission to their lawful
 17 mandates.” *Id.* (citing *Anderson v. Dunn*, 6 Wheat. 204, 227 (1821)). These powers are
 18 not governed by rule or statute but “by the control necessarily vested in courts to manage

19
 20 ¹ The court has authority to sanction parties or counsel under Local Rule LCR 11(c) for
 21 non-compliance with a court order: “Any attorney or party who without just cause fails to
 22 comply with . . . an order of the court . . . in addition to or in lieu of the sanctions and penalties
 provided elsewhere in these rules . . . may be subject to such other sanctions as the court may
 deem appropriate.” Local Rules W.D. Wash LCR 11(c).

1 their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Id.*
 2 (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31).

3 Under its inherent powers, a court may sanction an attorney or party who (1) acts
 4 in “bad faith, vexatiously, wantonly, or for oppressive reasons” or (2) willfully disobeys a
 5 court order. *Chambers*, 501 U.S. at 45-46. The decision whether to impose sanctions is
 6 in the discretion of the court. *Air Separation, Inc. v. Underwriters at Lloyd’s of London*,
 7 45 F.3d 288, 291 (9th Cir. 1995). Sanctions may be imposed against the party, against
 8 counsel, or against the entity who controls the litigation, even if not a party to the case,
 9 *Lockary v. Kayfetz*, 974 F.2d 1166, 1169 (9th Cir. 1992), and may be imposed either by
 10 motion or sua sponte. *Roadway*, 447 U.S. at 765.

11 Nevertheless, the court’s inherent powers are not broad, but limited. These
 12 powers are “shielded from direct democratic control,” so they are necessarily “limited,”
 13 and “not . . . ready at an imperial hand,” and must be exercised only with “restraint and
 14 discretion.” *Id.* at 42; *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 764 (1980). This is
 15 particularly true in cases where the court is “accuser, fact finder, and sentencing judge all
 16 in one.” *In re Peters*, 642 F.3d 381, 384 (2d Cir. 2011). In particular, there are certain
 17 due process restraints on the court’s ability to impose sanctions:

- 18 • **Notice.** The court must notify the party being sanctioned of the legal rule on
 19 which sanctions are to be based, the reasons for the sanctions, and the form of the
 20 potential sanctions. *Lasar*, 399 F.3d at 1109-10; *Mickle*, 297 F.3d at 126; *Rogal*,
 21 74 F.3d at 44. The court must notify the party being sanctioned that it stands
 22

accused of bad faith conduct, not merely unreasonable conduct. *DeVille*, 361 F.3d at 549.

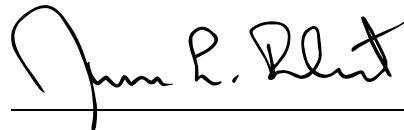
- **Opportunity to be heard.** The court must conduct a hearing or permit briefing to determine whether sanctions are appropriate. *Lasar*, 399 F.3d at 1109-10; *Or. RSA*, 76 F.3d at 1007-08 (reversing sanctions order because no hearing held); *Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000) (opportunity to submit briefing can satisfy due process requirements).
- **Findings.** The court must make a specific finding that the attorney or party being sanctioned acted in bad faith or willfully disobeyed a court order. *Chambers*, 501 U.S. at 44; *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 650 (9th Cir. 1997).
- **Heightened Standard of Proof.** Sanctions imposed under the court's inherent power are punitive in nature and so must be proven by clear and convincing evidence. *Shepherd v. Am. Broad. Co., Inc.*, 62 F.3d 1469, 1476-78 (D.C. Cir. 1995).

B. Form of sanctions

Courts may impose many different kinds of sanctions under their inherent power, but in this case the court is only contemplating (1) censure or formal reprimand; (2) fines payable to the court or to the class; (3) attorney's fees or costs; (4) award of compensatory damages for harm suffered as a result of misconduct; (5) warnings about possible dismissal if misconduct persists; and (6) prohibition on representing future plaintiffs in same type of case without leave of court.

1 If the sanctions are monetary, the following factors will be consulted to determine
2 the appropriate amount of the sanction: (1) the nature and quality of the conduct at issue;
3 (2) who is responsible for the culpable conduct as between attorney and client; (3)
4 whether there was a pattern of wrongdoing requiring a stiffer sanction; (4) the sanctioned
5 party's ability to pay; (5) whether the opposing party was hindered or prejudiced by the
6 wrongdoer's conduct; and (6) any other mitigating or aggravating factors. *Republic of*
7 *Philippines v. Westinghouse Elec. Corp.*, 43 F.3d 65, 74 (3d Cir. 1994).

8 Dated this 30th day of July, 2013.

9
10
11 

12 JAMES L. ROBART
13 United States District Judge
14
15
16
17
18
19
20
21
22